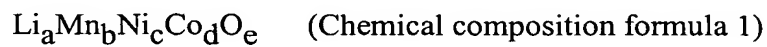


AMENDMENTS TO THE CLAIMS:

Claims 1-6 (Canceled)

7. (Currently amended) A positive active material comprising:

a composite oxide which comprises ~~is constituted of at least~~ lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:



[[O]]wherein $0 < a \leq 1.3$

$$|b-c| \leq 0.05$$

$$0.6 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

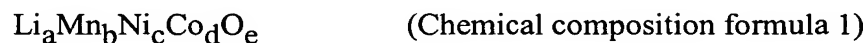
$$b+c+d=1[[]], \text{ and}$$

wherein said composite oxide comprises an oxide which is other than

$\text{LiMn}_{0.05}\text{Ni}_{0.05}\text{Co}_{0.9}\text{O}_2$, and $b \neq 0.1$.

8. (Currently amended) A positive active material comprising:

a composite oxide which comprises ~~is constituted of at least~~ lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:



[[O]]wherein $0 < a \leq 1.3$

$$|b-c| < 0.03$$

$$0.8 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b+c+d=1[[]], \text{ and}$$

wherein said composite oxide comprises an oxide which is other than $\text{LiMn}_{0.05}\text{Ni}_{0.05}\text{Co}_{0.9}\text{O}_2$, and $b \neq 0.1$.

9. (Currently amended) A non-aqueous electrolyte battery, comprising: having
a positive electrode including ~~containing~~ the positive active material of claim 7; $[[,]]$
a negative electrode; $[[,]]$ and
a non-aqueous electrolyte.

10. (Currently amended) A non-aqueous electrolyte battery, comprising: having
a positive electrode including ~~containing~~ the positive active material of claim 8; $[[,]]$
a negative electrode; $[[,]]$ and
a non-aqueous electrolyte.

11. (Currently amended) A non-aqueous electrolyte battery, comprising: having
a positive electrode, a negative electrode, and a non-aqueous electrolyte, ~~characterized in~~
~~that~~

wherein the positive electrode comprises ~~contains~~ a lithium-manganese oxide (A) having a spinel structure and represented by the general formula LiMn_2O_4 and a lithium-nickel-manganese-cobalt composite oxide (B) having an $\alpha\text{-NaFeO}_2$ type layer structure and represented by the general formula $\text{Li}_a\text{Mn}_b\text{Ni}_c\text{Co}_d\text{O}_e$,

wherein a weight ratio of (A) to (B) is in a range from 5:95 to 10:90, and

wherein

$$0 < a \leq 1.3$$

$$|b - c| \leq 0.05$$

$$0.6 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b + c + d = 1.$$

12. (Currently amended) A non-aqueous electrolyte battery, comprising: having
a positive electrode, a negative electrode, and a non-aqueous electrolyte, ~~characterized in~~
~~that~~

wherein the positive electrode comprises ~~contains~~ a lithium-manganese oxide (A) having
a spinel structure and represented by the general formula LiMn_2O_4 and a lithium-nickel-
manganese-cobalt composite oxide (B) having an $\alpha\text{-NaFeO}_2$ ~~type~~ layer structure and represented
by the general formula $\text{Li}_a\text{Mn}_b\text{Ni}_c\text{Co}_d\text{O}_e$,

wherein a weight ratio of (A) to (B) is in a range from 5:95 to 10:90, and

wherein

$$0 < a \leq 1.3$$

$$|b - c| < 0.03$$

$$0.8 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

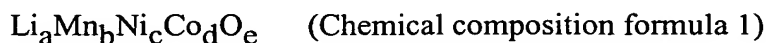
$$b + c + d = 1.$$

13. (Currently amended) The non-aqueous electrolyte battery of claim 19 ~~11~~, wherein
~~characterized in that~~ the positive electrode includes ~~contains the~~ (A) and the (B) in a proportion
(weight ratio ~~ratio~~) of from 5:95 to 90:10.

14. (Currently amended) The non-aqueous electrolyte battery of claim 20 ~~12~~, wherein
~~characterized in that~~ the positive electrode includes ~~contains the~~ (A) and the (B) in a proportion
(weight ratio ~~ratio~~) of from 5:95 to 90:10.

15. (New) A positive active material comprising:

a composite oxide which comprises lithium (Li), manganese (Mn), nickel (Ni), cobalt
(Co), and oxygen (O) and is represented by the following chemical composition formula:

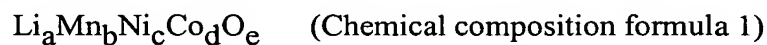


wherein $0 < a \leq 1.3$

$$\begin{aligned} |b-c| &\leq 0.05 \\ 0.6 &\leq d \leq 0.833 \\ 1.7 &\leq e \leq 2.3 \\ b+c+d &= 1, \text{ and} \\ b &\neq 0.1. \end{aligned}$$

16. (New) A positive active material comprising:

a composite oxide which comprises lithium (Li), manganese (Mn), nickel (Ni), cobalt (Co), and oxygen (O) and is represented by the following chemical composition formula:



wherein $0 < a \leq 1.3$

$$\begin{aligned} |b-c| &< 0.03 \\ 0.8 &\leq d \leq 0.833 \\ 1.7 &\leq e \leq 2.3 \\ b+c+d &= 1, \text{ and} \\ b &\neq 0.1. \end{aligned}$$

17. (New) A non-aqueous electrolyte battery, comprising:

a positive electrode including the positive active material of claim 15;
a negative electrode; and
a non-aqueous electrolyte.

18. (Currently amended) A non-aqueous electrolyte battery, comprising:

a positive electrode including the positive active material of claim 16;
a negative electrode; and
a non-aqueous electrolyte.

19. (New) A non-aqueous electrolyte battery, comprising:

a positive electrode, a negative electrode, and a non-aqueous electrolyte,

wherein the positive electrode comprises a lithium-manganese oxide (A) having a spinel structure and represented by the general formula LiMn_2O_4 and a lithium-nickel-manganese-cobalt composite oxide (B) having an $\alpha\text{-NaFeO}_2$ layer structure and represented by the general formula $\text{Li}_a\text{Mn}_b\text{Ni}_c\text{Co}_d\text{O}_e$,

wherein

$$0 < a \leq 1.3$$

$$|b - c| \leq 0.05$$

$$0.9 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b + c + d = 1$$

$$b < 0.05.$$

20. (New) A non-aqueous electrolyte battery, comprising:

a positive electrode, a negative electrode, and a non-aqueous electrolyte,

wherein the positive electrode comprises a lithium-manganese oxide (A) having a spinel structure and represented by the general formula LiMn_2O_4 and a lithium-nickel-manganese-cobalt composite oxide (B) having an $\alpha\text{-NaFeO}_2$ layer structure and represented by the general formula $\text{Li}_a\text{Mn}_b\text{Ni}_c\text{Co}_d\text{O}_e$,

wherein

$$0 < a \leq 1.3$$

$$|b - c| < 0.03$$

$$0.9 \leq d < 1$$

$$1.7 \leq e \leq 2.3$$

$$b + c + d = 1$$

$$b < 0.05.$$